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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947

No. 270

HARRISON PARKER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT.

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BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT.

STATEMENT.

MAY IT PLEASE THE COURT:

This brief is in answer to petitioner's brief in support of his petition for certiorari, upon which he has elected to stand.

OPINIONS OF THE COURTS BELOW.

The Illinois Supreme Court's opinion (396 Ill. 583; R. 211-214) refers to the opinion of the Illinois Appellate Court, *People* v. *Parker*, 328 Ill. App. 46, for a statement of the facts. For the convenience of the Court, the entire Appellate Court opinion is printed as Appendix B to this brief.

JURISDICTION.

Petitioner has waived all constitutional questions by appealing the final contempt judgment of January 23, 1945, to the Appellate Court of Illinois and not to the Supreme Court of Illinois (our Brief in Opposition to his Petition for Certiorari; also *infra*, pp. 8-9, 20-22).

STATEMENT OF THE FACTS.

The facts stated in the opinions of the Supreme Court of Illinois (R. 211-214) and of the Appellate Court of Illinois (Appendix B) are nowhere challenged by petitioner. The following undisputed facts, taken in the main from these opinions, show that petitioner, Harrison Parker, on December 8, 1943, brought a slander suit in the Circuit Court of Cook County, Illinois, against one Jacob Shamberg, alleging that Shamberg had said of and concerning him, petitioner: "You are a blackmailer," to which Shamberg pleaded the truth (R. 1; R. 212; App. "B", pp. 1-2).

Seeking discovery of documents preliminary to trial, Shamberg filed a verified motion praying that petitioner be ordered to show cause why he should not produce for inspection and to be copied and photographed certain documents listed in the motion (R. 212; R. 66-69; App. "B", pp. 1-2). The motion (R. 66-70) also prayed that petitioner be required to state by affidavit whether any of the specified documents were then or had at any time been in his possession or power and if not then in his possession or power, when he had parted with the same and what had become thereof (R. 212; App. "B", p. 2).

As correctly stated in the opinion of the Supreme Court of Illinois (R. 212), this motion was prepared and presented under the authority of paragraphs 8 and 9 of Rule 17 of the Supreme Court of Illinois relating to the discovery of documents (Illinois Revised Statutes [1945], Chapter 110, Par. 259.17, Sub-paragraphs 8 and 9, p. 2541). The pertinent paragraphs of Rule 17 are set up in Appendix "A".

In the language of Rule 17, the motion averred that the documents of which discovery was sought were documents "relating to the merits of the matter in controversy" (R. 66-70) [i. e., whether or not petitioner was a blackmailer] and were described in the motion as documents showing dealings among petitioner, the so-called "Puritan Church" and certain purported affiliated organizations (R. 67-69). These documents, petitioner had claimed in statements to the Court, not under oath, were all in Canada (R. 4, 195-196, 180), to which Shamberg's counsel responded that they were entitled to have petitioner make these statements in the form of affidavits for further proceedings under Rule 17 (R. 4).

When this motion was made on January 2, 1945 (R. 212, 66; App. "B", pp. 1-2), petitioner, after repeating his claim that all of the documents sought were in Canada and would not be brought back, stated in open court: "Your Honor, I suppose I have no objection to your entering the order if you want to do it" (R. 4; App. "B", p. 8). When asked how much time he wanted to file the required affidavit, petitioner stated (R. 5; also App. "B", p. 8): "They [i. e., the documents described in the motion] are not coming back, Your Honor. There is no worry about that. I can answer that thing. I should say give me until Friday and *I will have a nice answer; one that the town will be glad to have on record*" (Italics supplied.)

Thereupon, an order was entered by the court in the language of Rule 17 (Appendix "A") requiring that within four days he **"show cause why he should not produce for inspection and to be copied or photographed, the documents described in said written motion . . ."**; and also that he ". . . state by affidavit filed in this Court whether any of the documents described in said written motion are now

or at any time in the past have been in his possession or power, and if not now in his possession or power, when he parted with the same and what has become thereof* (R. 71; R. 212; App. "B", p. 2). **This order says not a word about "filing" any of the documents.**

The directive language of this order is quoted because petitioner's entire claim in this Court that he was denied due process is based on the hypothesis that this order compelled him under threat of punishment actually to *file* in court [or with the Clerk of the Court] the documents in question (Petition for Certiorari, pp. 4, 12, 13, 14).

The Supreme Court of Illinois has held, however, that this order, entered under its own Rule 17, neither required nor permitted petitioner to file the documents (R. 213). The text of the order would admit of no other construction; nor could the Discovery Rules of the Illinois Supreme Court give the order any other effect even if the construction of the order were one for this Court rather than for the Illinois court.

On January 4, 1945, two days after the entry of the above described order, petitioner filed in the office of the Clerk of the Circuit Court of Cook County an affidavit in which he stated in substance concerning the documents whose discovery was requested that some had never been in his possession, some he had given to other persons, some he had destroyed, and four he had in his possession (R. 212, 5-6, 125-127, App. "B", pp. 2-3). Instead of contenting himself with merely stating whether he was willing to have Sham-

* Rule 17 provides for further proceedings, thus:
"'. . . On the return or hearing of the order to show cause the Court may make such order as to discovery or inspection as may be just, and, if the other party claims that the document or article is not in his possession or control he may be ordered to submit to examination in open court or by deposition regarding the locating of such document or article."

berg, the other party to the slander suit, inspect or copy or photograph these four documents—which was all the Supreme Court of Illinois has held that the order required or permitted him to do (R.213)—petitioner attached purported copies of the four documents as exhibits to his affidavit and, as stated above, filed the same in the office of the Clerk of the Circuit Court of Cook County (R. 212; R. 126-127; App. "B", pp. 2-3).

These four documents—attached as exhibits to the contempt order (see R. 212, 127-150), the constitutionality of which is challenged in this Court—all purport to be records, letters and other papers of the so-called "Puritan Church" with which petitioner claimed to have been identified as an officer, and each of the documents bears his signature in some official capacity (R. 212, 138-139, 140, 148, 150; App. "B", pp. 2-3). As we have already stated, petitioner had informed the trial Court that all such documents were in Canada and would not be brought back (R. 4).

The nature of these documents has been thoroughly delineated in the opinions of the courts below (see App. B, pp. 3 to 8; and R. 211-214).

The Attorney General will not advance the design of petitioner by unnecessarily detailing his monstrous accusations against judges, officials and private citizens. Suffice it to say: They are unprecedentedly venomous; they include exhortations to hang or shoot judges and other citizens summarily (R. 89, 137-138, 85, 133), and make deprecatory allusion to certain of the judges named on account of their race and faith (see R. 211-214); also App. B, also R. 91, 141; also R. 93, 196, 143, 145; also R. 79, 87, 135, 87, 88, 135, 136; also R. 155, and R 191-192.

Because of the improper filing of these documents, Shamberg's counsel, on January 8, 1945, suggested that petitioner be summarily punished for *direct* contempt (R.

212, 24-25). The contempt being direct, no sworn petition was filed and no rule to show cause was entered; admittedly none was necessary or proper.*

Thereafter, as correctly stated in the opinion of the Appellate Court (App. B, p. 8):

> "* * * While contempt proceedings against him, growing out of the filing of the affidavit and the documents attached to it, were pending, Parker filed, on January 15, 1945, an answer [see R. 102-150], in which he stated that 'all of the contents of said letters, documents and papers (attached to his affidavit) are true.' Attached to the answer as an exhibit is a copy of his affidavit of January 4 and all of the exhibits attached to it [See R. 125-150]."

Of petitioner's voluntary filing of this answer, the Supreme Court of Illinois says (R. 212-213):

> "* * * Without permission of the court, plaintiff in error, on January 15, 1945, filed a long, verified answer to this motion in which he attempted to purge himself by asserting that the contents of the various documents were true. To this answer he appended his affidavit of January 4, 1945, together with the five exhibits attached to it. Thus, again, he presented to the court the same impertinent, insulting and scandalous matters contained in his first affidavit * * *".

When petitioner refiled his affidavit of January 4, by attaching a copy of it to his improper answer of January 15, the trial court on that date summarily sentenced him to jail for 90 days for *direct* contempt for obstructing justice, by improperly filing these scandalous, false, defamatory and impertinent documents. The sentence was first imposed in the original order of January 15, 1945, which incorporated the offending documents by reference (R. 71-74). This order was later superseded and amplified

* In our "Brief in Opposition to Petition for Writ of Certiorari," page 4, we inadvertently stated that a rule to show cause was entered.

by the amended order of January 23, 1945—the amplification consisting of the physical inclusion of the offending affidavit and answer (R. 74-150).

Petitioner nowhere challenges these findings of fact by the courts below.

Of the ninety-day sentence, the Appellate Court of Illinois said that although it was "too mild" it might nevertheless tend in its opinion to deter other "evil-minded persons from defiling the records of our courts" (App. "B", p. 13).

Petitioner applies to the Illinois Supreme Court for Writ of Error and Supersedeas in connection with order of January 15, 1945, not the order of January 23, 1945.

Because of charges that petitioner makes in this Court that the records of the Supreme Court of Illinois have been "looted" (see petitioner's "Motion to Strike Brief in Opposition to Petition for Writ of Certiorari"), respondent presents the following additional facts:

When the order of January 15, 1945, was entered, petitioner sought a review thereof by applying directly to the Supreme Court of Illinois in a Petition for Writ of Error and Supersedeas presented to a Justice, who denied it on January 23, 1945 (R. 57). Later that same day, with petitioner present in Court (R. 75), the original order of January 15, 1945 was replaced by the amended order of January 23, 1945. The amendment consisted of the inclusion as exhibits of the contemptuous affidavit and answer (see R. 77-150), which in the original order of January 15 had been incorporated by reference (R. 73). This is all admitted by petitioner's tenth assignment of error (see R. 58, 62), wherein he complains that the trial court erred in *again* taking jurisdiction and entering the amended order

[i. e., the order of January 23, 1945] after a motion for a writ of error and supersedeas had been denied by the Supreme Court of Illinois [i. e., from the original order of January 15, 1945].

In the courts below, petitioner admitted, and will doubtless admit in this Court, that he *never attempted* a direct appeal to the Illinois Supreme Court from this *order of January 23, 1945;* and he sought to excuse his failure so to do on the alleged ground that it would have been "useless" since that court had already refused to take jurisdiction of the order of January 15, 1945. (see Appendix "C").*

Instead of making a direct application to the Illinois Supreme Court, petitioner took that order—the amended order of January 23, 1945, the one here in question—directly to the Appellate Court of Illinois (R. 60-61). The records of the Supreme Court of Illinois therefore quite naturally do not show any denial of writ of error or *supersedeas* from that order, the amended order of January 23, 1945, as appears from Exhibit A, p. 7 of petitioner's "Motion to Strike Brief in Opposition to Petition for Writ of Certiorari"; **for admittedly no such application was ever made or denied.** Overlooking these admitted facts, petitioner asserts in said motion that the records of the Supreme Court of Illinois were "looted" of evidence of an attempt by petitioner to take the order of January 23, 1945 directly to the Supreme Court of Illinois.

* Appendix "C" consists of photostatic copies of certain pages from petitioner's brief in the Illinois Appellate Court, which have been certified by the Clerk of that Court and filed in this Court. Printed reproductions of these are appended to this brief as Appendix "C."

SUMMARY OF ARGUMENT.

(1) Petitioner filed an affidavit in the court records of *Parker* v. *Shamberg*, to which he deliberately attached copies of four documents.

(2) Petitioner was not ordered, allowed or permitted to place such documents in the court records.

(3) These four documents are of unparalleled impertinence and scandal.

(4) Petitioner was motivated by private spite and public malice, well knowing he was not allowed or permitted thus to misuse the rolls of the court.

(5) After being put on notice by contempt proceedings, he deliberately filed an improper answer to which he again attached the same contemptuous documents.

(6) Petitioner was thereby guilty of a direct contempt of court for which his punishment is "mild".

(7) Petitioner has waived all constitutional questions by failing to seek direct review of the final contempt judgment of January 23, 1945, in the Supreme Court of Illinois.

(8) In any event, the order adjudging petitioner in contempt was so plainly justified that even if he had not waived his "constitutional questions", he could not prevail upon them in this court.

(9) Apart from any consideration of "vindicating its dignity," the court had a right (and we say a duty) to prevent the use of its archives as a facility for the defamation of private citizens, just as courts have a right and duty to punish as contempts admitted forgeries of their records, assaults upon citizens in their presence, and the use of their courtrooms for the public and gratuitous defamation of inhabitants of the community.

ARGUMENT.

I.

The discovery order of January 2, 1945 neither compelled nor permitted Parker to file the offending documents; and his act in doing so was voluntary and contemptuous. Therefore the contempt order of January 23, 1945 punishing him for so doing does not deprive him of due process.

Courts have the inherent power and duty to preserve the integrity of their files, to prevent the encumbrance of their records with unauthorized documents and to protect their proceedings against the malicious insertion of scandalous and impertinent matter. This right and duty has from time immemorial been enforced by direct contempt proceedings as for obstructing justice. In the present case, as pointed out in the opinion of the Illinois Appellate Court (App. B, p. 8), petitioner's threat, "I will have a nice answer; one that the town will be glad to have on the record" (R. 5), justifies the conclusion that he "desired publicity for his infamous charges and that in furtherance of that desire he filed the pleading and documents, so that the records of the Court would contain his charges." (App. —) Had petitioner merely published, out of the presence of the Court, the charges contained in the offending documents, he could not in all probability have been punished for contempt unless the charges were of such a nature as to constitute a "clear and present danger" to proper consideration of pending litigation (*Bridges* v. *California*, 314 U. S. 252; *Pennekamp* v. *State of Florida*, 328 U. S. 331). But when petitioner chose to spread his charges in the court records, he committed an act in the *presence of the court;*

and no reasonable person can or will deny that unless some excuse can be found for his act, he was guilty of direct contempt.

Quite aside from vindication of the court's dignity is the very important and self evident consideration that the court may prevent the use of its records, as it may prevent the use of its courtroom, as facilities for the utterance of gratuitous obloquies upon the state's inhabitants.

Forgery is a crime; but forgery of judicial records, or the utterance of forgeries in or upon a court, is contempt. Assault and battery is a crime. But if committed in the presence of the court, it is a contempt. And, we submit, impertinent defamations, oral or written, in the presence of a court or by the perversion of its facilities, is a contempt even if it also constitutes an independent offense. [This is true whether the victims of such attack, physical, oral or written, are judges, such as were some of petitioner's victims, or private citizens, as were others of the persons upon whom petitioner chose to pour forth his objurgations.]

Punishment for direct contempt is not lack of due process; indeed, the inherent power of the courts instantly to repel such vicious attacks committed in their very presence "cannot be denied them without inviting or causing such obstruction to the orderly and impartial administration of justice as would endanger the rights and safety of the entire community" (*Ex Parte Terry*, 128 U. S. 289, 309); (see also *Owens* v. *Dancy*, 36 Fed. (2d) 882 (cert. denied, 281 U. S. 746); *Kneisel* v. *Ursus Motor Co.*, 316 Ill. 336 (writ of error dismissed); *Gilmore* v. *People*, 273 U. S. 772; *People* v. *Sherwin*, 334 Ill. 609; 17 C. J. S. §28, pp. 37-38; *Sears* v. *Starbird* (Cal.), 16 Pac. 531; *Huggins* v. *Field* (Ky.), 244 S. W. 903; *In re Breen* (Nev.), 93 Pac. 997). As a matter of

fact, petitioner himself does not contend in this Court that the documents themselves are not *malum in se**; instead he argues that he should be excused from punishment for direct contempt for spreading them in the court records.

The only excuse that he offers in this Court is bottomed on his assertion that the trial court, in the discovery order of January 2, 1945 (Rec. 70-71), threatened him with punishment for contempt unless he did file these documents; and that when he did so, the trial court, in the amended contempt order of January 23, 1945, found him guilty of direct contempt for so doing, which he says deprives him of his liberty without due process of law (Pet., pp. 4, 12, 13 and 14).

Now unless this is true, petitioner admittedly filed the documents as an inexcusable voluntary act in the face of the Court, punishable as a direct contempt. From this it would ineluctably follow that the contempt order of January 23, 1945, punishing him for doing so was not a denial of due process: *Cooke* v. *U. S.*, 267 U. S. 517, 534; *Ex Parte Terry,* 128 U. S. 289, 309. If the contempt order was clearly not a denial of due process, then no substantial injustice could have been done petitioner by the Supreme Court of Illinois' statement in its opinion that he had waived all constitutional questions by appealing to the Appellate Court (Pet., pp. 8, 2-3, 4, 9, 12, 14 and 15). Absent the due process question, the Illinois courts could have come to no conclusion other than that filing the documents was a direct contempt (*People* v. *Sherwin,* 334 Ill. 609).

* In the Appellate Court he contended again that all of his infamous charges were true and hence no contempt. His attorney was censured by the Appellate Court for repeating on his own authority as counsel that the charges were true (App. "B," pp. 13-14).

But the order did not even give petitioner leave, much less did it command him, to file the documents.

We have only to glance at the order to see that it did not. The order, entered with petitioner's consent (R. 4-5, 70-71), was a simple discovery order entered under Rule 17, Pars. 8, 9,* of the Supreme Court of Illinois—and that Court, in construing its own rule, has so held (R. 211-212).

This discovery order merely required petitioner, *first, to show cause* why he should not produce for inspection [by the other party, Shamberg] and to be copied or photographed [by Shamberg] certain documents described in the motion upon which the order was based (R. 71) and, *second,* to state by affidavit whether any of the documents described in the written motion were then or had been in his possession or power and, if not, when he parted with them and what had become of them (R. 71). This second requirement was peculiarly *apropos* because petitioner had repeatedly denied to the trial court that he had possession of any of the documents in question, and had said that they were all in Canada and would not be brought back (R. 4, 159-160, 194-195).

Of petitioner's basic contention that if he had not *filed* the papers in question he could have been punished for contempt, the Supreme Court of Illinois disposes as follows (R. 213):

> "Plaintiff in error first contends that the documents in question were material to the issues in the slander suit against Shamberg, and the filing of them under the compulsion of an order of court could not be a contempt of court. By this argument plaintiff in error misconceives both the purpose and the extent of the court order. He had only to produce the documents

* These paragraphs are attached as Appendix "A."

> for inspection and to be copied or photographed by the adverse party, under the direction of the court, and he would have fully complied with the order of court as well as with the rule under which it was issued. Instead of complying with the order, [fol. 198] and for reasons best known to himself, he chose to file them with the clerk of the court, thus spreading the contents of the documents on the records of the court."

This construction of the Illinois Supreme Court's rules of practice is binding on this Court: *John* v. *Paullin*, 213 U. S. 583, 585; *Central Union Co.* v. *Edwardsville*, 269 U. S. 190, 195; *Hawks* v. *Hamill*, 288 U. S. 52, 57, 58; *United Gas Co.* v. *Texas*, 303 U. S. 123, 139; *Lyons* v. *Oklahoma*, 322 U. S. 596, 601.

Petitioner hints in this Court that even if the discovery order of January 2, 1945, did not compel him to file the documents, it nevertheless *permitted* him to do so (see Pet. p. 13). This suggestion is based on the erroneous claim that the discovery order had held the documents "relevant". The Supreme Court of Illinois disposed of this claim as follows (R. 213):

> "Plaintiff in error's suggestion that the documents were material to the main suit becomes an empty argument when it is considered that these instruments had never previously been presented to the court, and the court, therefore, had no knowledge of their contents. The materiality of the documents had never been passed on by the court."

So it is clear that the order of January 2, 1945, neither required nor permitted petitioner to *file* any of the documents of which discovery was being sought. To hold otherwise would require a construction of Illinois Supreme Court Rule 17 (and of like discovery rules of other courts) to the effect that a party ordered merely to state the facts about whether he has or ever had possession of certain

documents, or about his willingness to let the other party see the ones he has; must also attach copies of the documents and *file* them in the Court's records before the Court has had a chance to inspect or to rule upon them. This construction, as pointed out by the Supreme Court of Illinois (R. 213), is too absurd to argue.

Equally ridiculous is the contention that such a discovery *permits* any document, no matter how evil, to be spread in the court's permanent records before the court has even been afforded an opportunity to inspect and rule upon it. In *Reiss* v. *Kirkman and Son*, 273 N. Y. S. 7; 242 App. Div. 77, the court, in construing the New York discovery rule upon which Rule 17 of the Illinois Supreme Court is based, said in part (p. 9):

> ". . . The purpose of the legislation was to promote the presentation of the facts in aid of justice, so that parties would not need to go blindly into a trial with no knowledge of what evidence might develop. Such methods of procedure facilitate a trial and aid in seeking the truth upon which justice should be based. Rule 141, above cited, requires the court to make such order 'as justice requires.' "

In his petition for certiorari, upon which he now stands, petitioner cites (pp. 13-14) the cases of *Lester* v. *People*, 150 Ill. 408, *Martin* v. *Martin Co.* (Del.), 102 Atl. 373, and *Beck* v. *Bohm*, 88 N. Y. S. 584. These cases all hold merely that a party ordered to make a discovery may, if he insists, require inspection of documents to take place in the presence of the Court or some officer thereof. None of these cases hold that a mere discovery order to show cause why documents should not be produced for *inspection* either requires or permits them to be *filed* as court records until after the Court has inspected and ruled on them.

These cases did not construe Rule 17 of the Supreme

Court of Illinois which, as already shown, holds that an order entered under that rule neither requires nor permits the filing of the documents of which discovery is sought. That construction is fair, reasonable, liberal and hence unassailable in this Court: *John* v. *Paullin*, 213 U. S. 583, 585; *Central Union Co.* v. *Edwardsville*, 269 U. S. 190, 195; *Hawks* v. *Hamill*, 288 U. S. 52, 57, 58; *United Gas Co.* v. *Texas*, 303 U. S. 123, 139; *Lyons* v. *Oklahoma*, 322 U. S. 596, 601.

This shows the invalidity of petitioner's excuse for the filing of the impertinent and scandalous documents. By so doing, petitioner committed a direct contempt and thus ran afoul of the inherent power of the courts to protect their permanent records from the unauthorized and inexcusable filing of such impertinent and scandalous documents or pleadings. That this inherent power may be exercised by summary punishment has never been disputed. "Such summary vindication of the court's dignity and authority is necessary. It has always been so in the courts of the common law, and the punishment imposed is due process of law" (*Cooke* v. *U. S.*, 267 U. S. 517, 534; *Ex Parte Terry*, 128 U. S. 289, 309).

In any case, petitioner admits (Pet. p. 2) that he filed these documents again when, after he had been put on notice by being cited for direct contempt for filing the documents of January 4, 1945, he filed, voluntarily and without permission of the Court, his long, verified answer of January 15, 1945 (R. 102-150). In this answer he attempted to purge himself by asserting the *truth* of the offending documents (R. 105-106) which he attached as exhibits thus again spreading them of record (R. 122-150). There was no order requiring or permitting petitioner to file this answer; he does not pretend that there was. Furthermore, no an-

swer or any other formal pleading was either necessary or proper since the contempt of January 4, 1945, with which he then stood charged, was a direct contempt in the face of the Court (*Ex Parte Terry*, 128 U. S. 289; 17 *Corpus Juris Secundum*, §28, pp. 37-38; *Owens* v. *Dancy*, 36 Fed. (2) 882; *Sears* v. *Starbird* (Cal.), 16 Pac. 531; *Huggins* v. *Field* (Ky.), 244 S. W. 903; *In re Breen* (Nev.), 97 Pac. 997; *People* v. *Sherwin*, 334 Ill. 609, 612, 617; *People* v. *McDonnell*, 377 Ill. 568, 572; *In re Estate of Kelly*, 365 Ill. 174, 183).

The record supports no conclusion other than this: When petitioner voluntarily besmirched the records of the Circuit Court of Cook County by filing, and then, after being put on notice, re-filing these documents, he did so voluntarily and not under the compulsion or permission of any court order, but in pursuance of his threat: "I will have a nice answer; one that the town will be glad to have on record" (R. 5), which, in the opinion of the Appellate Court (Appendix "B", p. 8) supports the conclusion that petitioner "desired publicity for his infamous charges and that in furtherance of that desire he filed the pleading and documents, so that the records of the Court would contain his charges." The Supreme Court of Illinois agrees in effect with this reasoning (R. 213). The finding as to petitioner's motivation is one of fact, is supported by fair, indeed, inescapable inference, was concurred in by three Illinois courts, and is therefore not open to review here.

Petitioner's act was a deliberate direct contempt. As this Court has pointed out, the inherent power of the courts instantly to repel such acts committed in their very presence by summary punishment for direct contempt ". . . cannot be denied them without inviting or causing such obstruction to the orderly and impartial administration

of justice as would endanger the rights and safety of the entire community" (*Ex Parte Terry,* 128 U. S. 289, 309). That the sentence imposed on petitioner may serve as a warning to other evil-minded persons who might be tempted to spread upon court records, without any authority or excuse, any impertinent or scandalous matter they may choose to file is indicated in the opinion of the Appellate Court of Illinois (Appendix B, p. 13).

In this Court, petitioner suggests that he is entitled to clemency because he was acting *pro se* when the contempts were committed, and is again acting *pro se* in this Court; he also hints that at most he was merely guilty of the erroneous belief that under the discovery order and the holding of the Supreme Court of Illinois in *Lester* v. *People*. 150 Ill. 408, he was ordered to spread the contemptuous documents of record [Pet., pp. 13-14].

In reply to this, it may be observed, *first,* that alleged ignorance of law is no excuse for committing criminal contempt; 17 C. J. S. §41, p. 54. Next, it should be noted that the record also shows that before he filed the documents, and again after he was charged with contempt for doing so, petitioner was represented by counsel (see R. 3, 60). Also, the phrasing of the body of the affidavit of January 4 (R. 77-78) and the answer of January 15 (R. 102-122) show clearly either that both are the handiwork of some undisclosed lawyer, or else that petitioner himself is skilled in the use of legal phraseology. Indeed, the basic theme of the offending documents is petitioner's claim that he is learned in the law; for he presumes to set himself above all of the courts of Illinois, both State and Federal, and to hold their judgments to be not only incorrect but "illegal," "unconstitutional," "corrupt" and resulting from "bribery".

Furthermore, as even the bitterest enemy of any of the

persons defamed would readily agree, petitioner's charges are in and of themselves so shocking as to be *malum in se*, and enough to put any person, no matter how unlearned in law, on notice before he presumed to defile any court by spreading them on its permanent records, where for all time, "He who runs may read." Moreover, when petitioner re-filed the documents in his answer of January 15, 1945, he had *actual notice* that it was claimed that his act in filing them on January 4 was contemptuous.

Finally, the question of petitioner's alleged erroneous belief is a question of fact. Petitioner could hardly have actually thought that an order to "show cause why he should not produce for inspection" meant that, under pain of an impending threat of a sentence for contempt, he had to spread on the court's records these papers which he had tod lthe Court were not in his possession but were in Canada and would not be brought back (R. 4-5). The courts of Illinois did not find that he entertained any such belief. This Court should not find so.

II.

Petitioner waived all constitutional questions by taking his case directly to the Appellate Court of Illinois.

In answer to the second point raised by petitioner (Pet. pp. 2-3, 4, 9, 12, 14 and 15), respondent points out and emphasizes the following facts:

After the original contempt order of January 15, 1945 was entered, petitioner applied directly to the Illinois Supreme Court for a writ of error and a supersedeas to review it (R. 57). But his motion was denied *and thereafter this order of January 15, upon which it was based, was super-*

seded by the amended order of January 23, 1945 (R. 74 *et seq.*)

The trial court had jurisdiction to enter this amended order. *Hovey* v. *McDonald*, 109 U. S. 150, 159-161; *Lee* v. *Fowler* (Mass.), 161 N. E. 910; 4 C. J. S. 606, pp. 1089-1090; *Ex Parte Friday* (Cal. App.), 32 Pac. (2d) 1117, 1118. The question of the court's jurisdiction to enter or amend an order while an appeal is pending is one of state law.

After this amended order of January 23, 1945, was entered, with petitioner present in Court (R. 75), he never made any attempt whatsoever to apply directly to the Illinois Supreme Court for any review of it. Instead, he sued out a writ of error in the Appellate Court which affirmed the sentence (R. 61). *And it is this amended order of January 23, not the order of January 15, of which he is now complaining.* As pointed out above, this is admitted in this Court by petitioner's tenth assignment of error, and was admitted by him in the courts below, where he sought to excuse his failure to apply directly to the Supreme Court of Illinois to review the contempt order of January 23, on the ground that since it had declined to take jurisdiction of the order of January 15, it would have been "useless" to ask it to review the later order of January 23.

Thus we see that the charge of "looting" made in petitioner's "Motion To Strike Brief in Opposition to Petition for Writ of Certiorari" is entirely baseless.

When petitioner took the Amended Order of January 23, 1945, directly to the Appellate Court, he waived all constitutional questions, which questions the Appellate Court, under the Illinois statute,* had no power to consider. *Peo-*

* Illinois Revised Statutes [1947], Chapter 110, § 199, p. 2539.

ple v. *McDonnell*, 377 Ill. 568, 569; *People* v. *Rosenthal*, 370 Ill. 244, 247; *Cherry* v. *Aetna Casualty Co.*, 372 Ill. 534, 544; *Brandtjen & Kluge, Inc.* v. *Forgue*, 299 Ill. App. 585, 589-590.

Both the Illinois Appellate and Supreme Court held that petitioner had waived any federal constitutional question, whether substantial or not, by suing out a writ of error in the Appellate Court instead of seeking direct review by the Supreme Court of Illinois. In doing so, the courts below followed a very well-settled axiom of Illinois Appellate procedure. See *People* v. *Billow*, 377 Ill. 236, 239; *Simon* v. *Reilly*, 321 Ill. 431.

Therefore, since petitioner never applied directly to the Illinois Supreme Court to review the contempt order of January 23, 1945, the present writ of certiorari should be dismissed on the authority of *Central Union Co.* v. *Edwardsville*, 269 U. S. 190. In that case this Court dismissed its writ of error for want of jurisdiction because it recognized and deferred to the Illinois procedural rule that recourse in the first instance to the Illinois Appellate Court rather than to the Illinois Supreme Court constitutes, under a permissible Illinois rule of practice, a waiver of all Federal constitutional questions. This Court held that rule to be constitutional and binding upon it and so held it had no jurisdiction to review such a case upon any federal constitutional ground.

Conclusion.

We respectfully submit that the mild punishment imposed on petitioner by the contempt order of January 23, 1945, was not a denial of due process of law under either the Federal or State Constitutions. Petitioner committed a direct contempt by filing the offending documents on

January 4, 1945. Charged with this contempt on January 8, he deliberately repeated and greatly aggravated the offense by filing his answer of January 15, 1945. His sole excuse that he was compelled by the discovery order of January 2, 1945, to file the documents under threat of punishment has been carefully weighed by both the Appellate and Supreme Courts of Illinois and has been held invalid for the simple reason that petitioner was neither required nor permitted by the discovery order to file the documents of which discovery was sought. The highest court of Illinois having held that petitioner was guilty of direct contempt, it follows that the mild punishment imposed on him was due process of law. This is true whether or not the courts below discussed in their opinions petitioner's alleged constitutional questions. Indeed, even had they done so, they could have come to no other conclusion other than the one they have come to: Petitioner was guilty of direct contempt; his excuse is no excuse; summary punishment for direct contempt is due process of law. For as this Court has wisely held in a celebrated case of direct contempt:

> ". . . Such summary vindication of the court's dignity and authority is necessary. It has always been so in the courts of the common law and the punishment imposed is due process of law" (*Cooke* v. *U. S.*, 267 U. S. 517, 534; see also *Ex Parte Terry*, 128 U. S. 289, 309.)

Of the ninety-day sentence imposed on petitioner, the Appellate Court of Illinois has remarked (Appendix "B", p. 13):

> "While we think that the punishment imposed was too mild in view of the nature of the offense, nevertheless, the judgment entered may tend to deter evil-minded persons from defiling the records of our courts."

For the reasons above set forth, we respectfully submit that this Honorable Court either dismiss the writ of certiorari for want of jurisdiction, or in the alternative, that it affirm the judgment of the Supreme Court of Illinois.

Respectfully submitted,

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APPENDIX A.

RULE 17 OF THE SUPREME COURT OF ILLINOIS (ILLINOIS REVISED STATUTES, 1947, CHAPTER 110, P. 259.17, SUB-PARAGRAPHS (8), (9)) PROVIDES:

(8) Any party may at any time move for an order directing any other party or person to show cause why he should not produce specified documents, relating to the merits of the matter in question in said cause, for inspection and to be copied or photographed, where no list of documents has been demanded or where such documents have not been listed under section 1 of this rule, or produce for inspection or to be photographed articles or property relative to the merits of the said matter, such motion to be supported by affidavits showing that such document or article is in the possession or control of the other party. On the return or hearing of the order to show cause the Court may make such order as to discovery or inspection as may be just, and, if the other party claims that the document or article is not in his possession or control he may be ordered to submit to examination in open court or by deposition regarding the locating of such document or article.

(9) The Court, on the application of any party to an action, also may enter an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been in his possession or power, and if not then in his possession, when he parted with the same, and what has become thereof. Such application shall be made upon an affidavit stating that in the belief of the deponent

the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matter or matters in question in the case, or to some of them.

APPENDIX B.

People v. *Harrison Parker*, 328 Ill. App. 46.

MR. JUSTICE SCANLAN delivered the opinion of the court:

This writ of error seeks to review two separate judgment orders. In each Harrison Parker, plaintiff in error, was found guilty of a direct contempt of the trial court, and the punishment imposed was ninety days in the county jail.

Both judgment orders were entered in a suit wherein plaintiff in error (hereinafter sometimes called Parker), on December 8, 1943, sued Jacob Shamberg for slander in saying of him, "You are a blackmailer." One of the defenses interposed was that "the words complained of are true." After Parker had been granted a change of venue from Judges Prystalski, Brothers, Fisher and Miner the cause was transferred to Judge Trude.

As to the first amended judgment order, entered January 23, 1945:

This judgment order found Parker guilty of a direct contempt of the court for filing in the office of the clerk of the Circuit Court on January 4, 1945, an affidavit and certain documents attached thereto; and for filing on January 15, 1945, an answer and exhibits attached thereto. The affidavit and the documents attached thereto and the answer and the exhibits attached thereto were made a part of the judgment order.

After certain preliminary steps had been taken in the slander proceeding, Shamberg, on January 2, 1945, filed a verified motion in which he asked that an order be entered directing Parker to show cause why he should

not produce for inspection and to be copied or photographed certain documents, specifying them; that Parker be required to state by affidavit whether any of the said documents are now or have been at any time in his possession or power, and if not now in his possession or power, when he parted with the same and what has become of them. The affidavit attached to the motion alleged that the documents related to the issues in the cause. The trial court entered an order that contains the following: "First, that the plaintiff, Harrison Parker, within four days from the date hereof, show cause why he should not produce for inspection, and to be copied or photographed, the documents described in said written motion . . .," and "Second, that the plaintiff, Harrison Parker, within four days from the date hereof, state by affidavit filed in this Court whether any of the documents described in said written motion are now or at any time in the past have been in his possession or power, and if not now in his possession or power, when he parted with the same and what has become thereof." Instead of complying with the order, Parker, on January 4, 1945, filed in the office of the clerk of the court an affidavit to which were attached and made a part of it certain documents, one purporting to be a "Certified Copy of a Resolution Passed at the Joint Meeting of the Ecumenical Council of the Puritan Church of the United States and the College of Divines of the Brotherhood of the Order of St. John, Held at the Masonic Temple, 32 W. Randolph Street, on August 16th, 1943, and Amended at the Adjourned Meeting Held in Chicago on February 5, 1944"; another, purporting to be a copy of a letter of "The Puritan Church—The Church of America," addressed to "The Illinois League of Women Voters, 225 North Michigan Avenue, Chicago, Illinois," dated December 20, 1944, signed, "The Puritan Church By Harri-

son Parker, its Chancellor"; another, purporting to be a copy of a letter of said church, addressed to "The Anti-Defamation League, 100 North La Salle Street, B'Nai B'Rith, Chicago, Illinois," signed, "The Puritan Church By Harrison Parker, its Chancellor"; another, purporting to be a copy of a letter of said church, addressed to the "Hon. Francis Biddle, Attorney General of U. S. A., Washington, D. C.," dated December 26, 1944, signed, "The Puritan Church By Harrison Parker, its Chancellor"; another, purporting to be a copy of a letter of said church, addressed to "Mr. Richardson," dated December 25, 1944, and signed, "Harrison Parker". Parker states in the affidavit that when he moved his private files from 4534 Greenwood Avenue, Chicago, in November, 1944, he destroyed all of his correspondence with Messrs. Miner, Norris and Race, "along with a lot of other useless and unimportant to him letters, records, etc.," and that he has attached to his affidavit all of the requested documents which he has at present in his possession, power, custody or control.

It would unduly lengthen this opinion to state in detail all of the many wild, malignant and scandalous charges that are made in the documents attached to the affidavit, against individuals, prominent public officials, judges of the various courts of Cook County, the judges of the Appellate Court of this District, judges of the Supreme Court of the State, and a judge of the United States District Court. The charges are not confined to the living—one of those attacked has been deceased for fifty years. Women, also, are wantonly attacked. The father of the trial judge, who died a number of years ago,[1] is charged with having put through a crooked deal, by which the

[1] [A reference to the late A. S. Trude (See R. 85), the father of the trial judge, Daniel P. Trude.]

public was robbed of enormous sums of money and a certain family enriched thereby. The first document attached to the affidavit charges, *inter alia*, that Robert R. McCormick "has either influenced, intimidated or bribed a U. S. Court Judge of Chicago in Case No. 22619,[2] to issue a crooked order which enabled him to enter his best friend's home, to steal his wife and break up his friend's home"; that the public records show that McCormick either influenced, intimidated or bribed Judges Fisher and Burke in a certain case to issue crooked orders in a vain attempt to hide the fact that a certain newspaper had stolen the sum of a hundred million dollars from Cook County;[3] that the "public records show that . . . McCormick either influenced, intimidated or bribed Justices Stone, Gunn and Wilson, still sitting on the Supreme Court of Illinois, to write in case 24881[4] an opinion more crooked than any ever written by Judge Manton of Atlanta Prison, by which Cook County's legal orderly law suit to compel the Chicago Tribune to disgorge millions of dollars it has stolen from Cook County, was temporarily obstructed"; that "the public records show that . . . McCormick either influenced, intimidated or bribed the entire division of the Appellate Court of Chicago, presided over by Judge Hugo Friend, to write a crooked opinion in Case No. 39804,[5] in litigation in which McCormick and his Weymouth Kirkland had a large money interest in a crooked opinion"; that in that opinion "the honest litigant [Parker] against Kirkland

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2 [A reference to the late Judge Kenesaw M. Landis who presided in the case of *In Re Edward Adams, Bankrupt* (See R. 109).]

3 [A reference to *People ex rel. Parker* v. *Whealan*, 370 Ill. 243; *People ex rel. Parker* v. *Board of Appeals of Cook County*, 367 Ill. 559.]

4 [A reference to the decisions in the two tax cases—*People ex rel. Parker* v. *Whealan*, 370 Ill. 243; *People ex rel. Parker* v. *Board of Appeals of Cook County*, 367 Ill. 559.]

5 [A reference to the case of *Harrison Parker* v. *Weymouth Kirkland*, 298 Ill. App. 340, in which Parker was defeated in a claim of slander.]

was outraged and despoiled by the crooked opinion of a crooked judge"; that "the public records show that . . . McCormick either influenced, intimidated or bribed Judges Joseph A. Sabath[6] and John Prystalski, of the Criminal Court of Cook County in Cases 20981 and A40,[7] to 'railroad' to Joliet Prison and to the Cook County Jail, for the benefit of this unconscionable scoundrel McCormick, men whom the Supreme Court of Illinois records in cases 20981[8] and 25595[7] show to be innocent of the charges for which they were 'railroaded' "; that "by reason of the corruption by said McCormick and his crooked lawyers of all the Courts of Illinois from Eugene McGarry's Municipal Court up to and including Francis Wilson's crooked Supreme Court of Illinois, the combined money fortunes of the Medill-McCormick-Patterson family now amounts to the dangerous figure of 125 million dollars"; that "the facts and evidence of the Chicago Tribune's 100 million dollar steal from Cook County and Robert R. McCormick and Weymouth Kirkland's pollution of the entire court system of Illinois, in a vain effort to hide their crimes, is even worse than it is in the above summary of the evidence, dug from actual public records"; that for "fixing crooked judges to write crooked opinions," McCormick "should be either incarcerated in an insane asylum or taken out by a posse of indignant and robbed fellow citizens, and either shot or hanged to an oak tree"; that McCormick, his newspaper and his crooked law firm have aided in plac-

[6] [A reference to the trial judge in the case of *People* v. *Leo Brothers* in which a jury found Brothers guilty of the murder of Alfred Lingle, the verdict and judgment being upheld by the Supreme Court of Illinois in *People* v. *Leo Brothers*, 347 Ill. 530.]

[7] [A reference to the trial judge in the case of *People* v. *Parker*, 374 Ill. 524, in which Parker was sentenced to ten days for contempt of court for tampering with the Grand Jury by writing an unsolicited letter making charges about the two tax cases in which he had been twice defeated in the Supreme Court of Illinois, i. e., *People ex rel. Parker* v. *Whealan*, 370 Ill. 243; *People ex rel. Parker* v. *Board of Appeals of Cook County*, 367 Ill. 559.]

ing on the Circuit and Superior Courts of Cook County and the Appellate and Supreme Courts of Illinois judges who pass judgment on the lives and property of defenseless men and women who have no way to protect themselves "against the depravities which such scoundrels will commit under the cover of a court order and opinions"; that the Governor of Illinois, by the orders of said McCormick, has and is violating the Constitution of Illinois; that "one Werner Schroder, McCormick member from Illinois of the Republican National Committee, walks in and out of the back doors of the chambers of the crooked judges of the Supreme Court of Illinois, to make political deals for them, and with them, and . . . McCormick"; that the courts of Illinois are not open to the citizens of Illinois because of the corruption of the judges. The document purports to show that a resolution was passed by the "Ecumenical Council of the Puritan Church of the United States" that the Federal Government at Washington be petitioned to convene a federal grand jury to investigate the charges made in the document and that President Roosevelt, under his war powers, "convene a military court, and under the rules of such a court try for the crimes which they are charged with having committed against the civil liberties of the Nationals who are compelled to dwell in Illinois, the following men: Robert R. McCormick, Joseph Medill Patterson, Weymouth Kirkland, Judges Harry M. Fisher, Joseph Burke, John Prystalski, Hugo Friend, Joseph A. Sabath, and Justices Wilson, Gunn and Stone of the Supreme Court of Illinois. If found guilty, they should be taken out either by soldiers or a posse of civilians and shot, as a warning to other scoundrels, that our Federal Government will not tolerate the violation of a State Constitution, and the 'railroad' to prison or jail of innocent men by the order of crooked judges in the hire of this scoundrel, McCor-

mick." Appended to the document is an affidavit made by Parker in which he states that he was the secretary of the Joint Meetings of the Ecumenical Council of the Puritan Church of the United States, held at the Masonic Hall, 32 W. Randolph Street, Chicago, on August 16, 1943, and in Chicago on February 5, 1944; that Deacon William Ede presided; and that the document "is a true amended copy of one of the resolutions unanimously passed at said meetings." In the third document attached to the affidavit, the letter to "The Anti-Defamation League, B'Nai B'Rith," the statement is made that "by the corruption of the entire court system of Illinois from Eugene McGarry's corrupt Municipal up to and including Francis Wilson's crooked Supreme Court of Illinois," the Chicago Tribune had stolen from the State of Illinois a hundred million dollars; "that the steal was accomplished by the open notorious cowardly and illegal connivance between the Tribune Company, the owners of the Chicago Tribune, and two Jews: one Harry M. Fisher, a Judge of the Circuit Court of Cook County; and the other, Jacob Shamberg, the Assistant State's Attorney of Cook County"; that "both of these gentlemen . . . in order to gain the favor of the thief, the Chicago Tribune, had criminally sold out the State which they had been paid to protect"; that an illegal order entered by Judge Fisher in a certain case, 38-C-3209,[*] "was more crooked than any ever issued by Judge Manton of Atlanta Prison." In the letter addressed to the Attorney General of the United States the statement is made that McCormick and his crooked lawyer, Weymouth Kirkland, "have corrupted the entire [court] system of Illinois, from Eugene McGarry's Municipal up to and including Francis Wilson's crooked Supreme Court of Illinois." In the letter

[*] [Another reference by the decision of the trial court which was affirmed by the Supreme Court of Illinois in *People ex rel. Parker v. Whealan*, 379 Ill. 243.]

addressed to the Illinois League of Women Voters the charge is repeated that the Tribune has corrupted all of the courts of Illinois. While contempt proceedings against him, growing out of the filing of the affidavit and the documents attached to it, were pending, Parker filed, on January 15, 1945, an answer, in which he stated that "all of the contents of said letters, documents and papers [attached to his affidavit] are true." Attached to the answer as an exhibit is a copy of his affidavit of January 4 and all of the exhibits attached to it.

In the amended judgment order entered January 23, 1945, the trial court found. "(3) That the filing of said scurrilous affidavit and exhibits thereto, and said scurrilous answer and exhibits thereto, by said Harrison Parker constitutes an obstruction of justice and an abuse of the processes of this Court, which conduct of said Harrison Parker took place while this Court was in open session and tended to lessen the dignity and authority of this Court; (4) The Court further finds that said Harrison Parker, who is now here present in open Court, is, by reason of said conduct guilty of direct contempt of this Court." The sentence then follows.

When the order of January 2, 1945, was entered, Parker, after stating to the trial court that he had no objection to the entry of the order if the court wished to enter it, said, "I will have a nice answer; one that the town will be glad to have on record." The record justifies the conclusion that Parker desired publicity for his infamous charges and that in furtherance of that desire he filed the pleading and documents, so that the records of the courts would contain his charges. In the documents and pleading filed by Parker he is pictured as a man of great ability and force, but after a careful consideration of the many wild charges and statements contained in the documents

and pleading we concluded that if there had been interposed in the trial court the defense that Parker was not of sound mind when he filed the documents and pleading, such a defense would have required serious consideration by the trial court and this court, but the record shows that no such defense was made and, therefore, for the purposes of this writ of error, we are obliged to presume that Parker was of sound mind when he committed the contempt of court for which he was punished.

[1] A number of so-called constitutional questions are raised by Parker. He sued out from this court the instant writ of error to review the two judgment orders finding him guilty of contempt. "The rule has long been settled that if a case is taken to the Appellate Court *and errors are asigned of which that court has jurisdiction,* the party taking the appeal or suing out the writ of error is deemed to have waived all constitutional questions involved. (*People* v. *Terrill,* 362 Ill. 61; *People* v. *Rosenthal,* 370 *id.* 244.) This eliminates from consideration the constitutional questions raised by plaintiff in error." (*People* v. *Billow,* 377 Ill. 236, 239. Italics ours.) After Shamberg raised the point in his brief that Parker had waived all constitutional questions by suing out a writ of error from this court, Parker, in his reply brief, asserts that he has not and does not waive any of the constitutional questions, and that "if Parker has appealed to the wrong forum, that can be remedied by a motion to transfer it to the proper forum. And the Appellate Court has a duty, not to proceed to judgment, but to transfer the cause, and may do so, on its own motion. (*Schmidt* v. *Barr,* 328 Ill. 365.)" Parker contends that under Section 86 of the Practice Act (ch. 110, par. 210, Ill. Rev. Stat. 1945 [Jones Ill. Stats. Ann. 104.086]) and Rule 47 of the Supreme Court of Illinois it is our duty to transfer the cause to the Supreme

Court. That section and that rule apply to cases brought to this court where we have no jurisdiction to entertain any of the issues raised on an appeal or writ of error. *Schmidt* v. *Barr, supra*, cited by Parker, is a case in point. There a freehold was involved, and it was held that as the Appellate Court had no jurisdiction of such a case it was the duty of the court to transfer the cause to the Supreme Court. But in the instant case Parker, by suing out a writ of error from this court, waived all constitutional questions that might be involved, *as his brief assigns a number of errors of which this court has jurisdiction*, and it is our right and duty to determine the merits of the instant writ of error.

[2, 3] There are certain settled principles of law that govern us in the consideration of this writ of error. "The only matter that can properly be considered on such a review is the order of the court adjudging the party to be in contempt. *People* v. *Hogan*, 256 Ill. 496; *People* v. *Gard*, 259 Ill. 238; *Kneisel* v. *Ursus Motor Co.*, 316 Ill. 336; *People* v. *Rockola*, 346 Ill. 27; *People* v. *Andalman*, 346 Ill. 149; *People* v. *Saylor*, 238 Ill. App. 142; *Tunnell* v. *People ex rel. Miller*, 253 Ill. App. 422; *Whitten* v. *State*, 36 Ind. 196; *Ex Parte Terry*, 128 U. S. 289." (*People ex rel. Bain* v. *Feinberg*, 266 Ill. App. 306, 308.) "A contempt committed in any place set apart for the use of any constituent part of the court during the session of the court is committed in the presence of the court and any conduct constituting a contempt in the presence of any one of the constituent parts of the court while engaged in the business devolved upon it by law is a contempt committed in the immediate presence of the court. (*People* v. *Cochrane*, 307 Ill. 126.)" (*People* v. *Andalman*, 346 Ill. 149, 153.) These settled principles of law determine several contentions raised by Parker, and adversely to him.

It is contended that "there can be no defamation when the matters published are true and of public concern"; that "Parker denies that the truth, as set forth in the five exhibits, constitute either an obstruction of justice or an abuse of the processes of the court. If they are true, how can they be an obstruction of justice? If they are true, how can they be an abuse of the processes of the Circuit Court? *Nothing in the record contraverts the truth of Exhibits A, B, C, D and E, the finding and order of the Honorable Daniel P. Trude to the contrary notwithstanding. They are still true.* And can Parker be charged with responsibility for what the Puritan Church did?" (Italics ours.) In support of his argument Parker cites *Storey* v. *People*, 79 Ill. 45, which case has no application to the instant proceedings. (See *People* v. *Sherwin*, 334 Ill. 609, 613.) Parker further contends that before the trial court could find him guilty of contempt it would have to hear evidence to determine the truth or falsity of the charges made and would then have to find that the charges were false before it could adjudge him guilty of contempt. It would seem hardly necessary to state that no authority is cited that supports this contention.

[4, 5] "Any act which is calculated to embarrass, hinder or obstruct the court in the administration of justice or to lessen its authority or dignity is a contempt. (*People* v. *Cochrane*, 307 Ill. 126.) Contempt may be committed by incorporating impertinent, scandalous, insulting or contemptuous language reflecting on the integrity of the court in pleadings, motions and notice of motions. (13 Corpus Juris, 31, 32.) In *Lamberson* v. *Superior Court*, 151 Cal. 458, 91 Pac. 100, an attorney was held guilty of contempt of court in filing an affidavit in support of a motion for change of venue from the judge, alleging that in a former trial of the case the judge willfully made errone-

ous rulings on the admission of evidence and gave erroneous instructions to the jury because of ill-will toward and hatred of the party making the application. In *McCormick* v. *Sheridan*, 20 Pac. (Cal.) 24, an attorney was held guilty of contempt in filing a petition for rehearing in which the good faith and sincerity of the commissioner who had written the opinion adopted by the court was attached. In *In re Dunn*, 85 Neb. 606, 124 N. W. 120, an attorney was held guilty of contempt of court in filing a petition for rehearing containing contemptuous and insolent language. . . . The disclaimer by plaintiff in error of any intentional disrespect to the court or any design to embarrass the administration of justice would have been of no avail, since his meaning and intent must be determined from the words used in his petition. (*People* v. *Wilson*, *supra* [64 Ill. 195].) In direct contempt committed in the presence of the court there is no need of evidence to prove what is already manifest. (*Hohenadel* v. *Steele*, 237 Ill. 229.) Whatever may have been the motive of plaintiff in error in using the language which was used in the petition filed by him, the use of such language was improper and constituted a direct contempt of the court in which such petition was filed, and the circuit court did not err in so finding." (*People* v. *Sherwin*, *supra*, 615, 616, 618.) In this last case it is stated (p. 618) that an answer that the charges made were true would not purge the defendant of contempt. The trial judge in the instant case would have been a fit subject for ridicule had he followed the practice that Parker insists was necessary.

[6] Parker contends that the charges contained in the documents filed were made by the Puritan Church and that he cannot be held responsible for the acts of that church. It is a sufficient answer to this idle contention to say that

he has been found guilty of direct contempt for *filing* the documents in the office of the clerk of the court.

We find no merit in several other contentions raised by Parker.

While we think that the punishment imposed was too mild in view of the nature of the offense, nevertheless, the judgment entered may tend to deter evil-minded persons from defiling the records of our courts.

We cannot allow certain conduct of the attorney for Parker to pass without condemnation. In the brief he filed in behalf of Parker he has seen fit to assert a number of times that all of the charges made by Parker are true. In the early part of our opinion we stated some of the infamous charges that are contained in a purported copy of a resolution passed at the joint meetings of the Puritan Church in Chicago on August 16, 1943, and on February 5, 1944. Referring to these charges, this attorney states: "It [Exhibit A] recites facts, which though deplorable, are nonetheless true, and as such, they are the basis upon which the Federal Government is urged to bring its power to bear so that 'republican form of government' can be re-established in Illinois." In commenting upon the exhibits attached to the affidavit filed by Parker on January 4, 1945, this attorney states: "If these exhibits are true, and they have never been proved otherwise, how can they be what the defendant, Shamberg, and Tribune lawyers have stated them to be? Neither the Tribune lawyers nor anyone else can make the truth anything but the truth, even though the necessity be ever so urgent. Can the mere statements of Shamberg and his Tribune lawyers override the laws of Illinois, the Constitution of the State of Illinois, and the Constitution of the United States, in addition to the truth? How can the power of contempt be

superior to the truth? Can the power of contempt be used as a bludgeon? If contempt is equal or superior to the truth, then it can be used to squelch, choke off and destroy the truth, but the history of the world proves that such is impossible not only in theory, but in practice any rulings of the Honorable Daniel P. Trude to the contrary notwithstanding." Other statements akin to the foregoing are also made in the brief. Thus it appears that the attorney sustains the infamous charges made by Parker against all of the courts of Illinois. It is our considered judgment that when Arthur Frankel, the attorney in question and an officer of this court, filed the brief for Parker in this court he was guilty of conduct far more reprehensible than that of Parker in filing the affidavit and the documents on January 4, 1945, and the answer on January 15, 1945.

[7, 8] "The lawyer's duty is of a double character. He owes to his client the duty of fidelity, but he also owes the duty of good faith and honorable dealing to the judicial tribunals before whom he practices his profession. He is an officer of the court—a minister in the temple of justice." (*People* v. *Beattie*, 137 Ill. 553, 574. See, also, *People* v. *Barrios*, 237 Ill. 527, 540.) "The obligation which attorneys assume when they are admitted to the bar is not merely to be obedient to the constitution and laws, but to maintain at all times the respect due to the courts of justice and judicial officers." (6 C. J. 594, Attorney and Client Sec. 54.)

Attorney Frankel was false to his obligations as an attorney when he filed the brief in question, and he has proven, out of his own mouth, that he is not fit to serve as "a minister in the temple of justice."

The first amended judgment order entered January 23, 1945, is affirmed.

As to the second contempt order, entered against Parker on January 23:

On January 15, 1945, eleven days after Parker had filed the affidavit and documents attached thereto, Shamberg filed in the slander proceedings a very long verified petition. It prays for an order directing Parker to show cause why he should not be punished for contempt of court for committing certain acts alleged in the petition. The petition is an anomalous pleading, and was clearly vulnerable to attack by apt pleadings. As Parker was found guilty of the second direct contempt because of certain statements in his answer to the petition, it is unnecessary for us to state all of the averments of the petition. In his brief Shamberg describes the petition as "a sworn petition asking for a rule on Parker to show cause why he should not be punished for other and further contempts, some *indirect*." We deem it necessary, however, to state the following averments in the petition:

"Said Parker has stated under oath that said so-called 'Puritan Church' and said 'Brotherhood of The Ancient Order of St. John' have made plans to hang and murder numerous citizens and public officials, including the Governor of Illinois, several judges of the Supreme Court of Illinois, the Appellate Court of Illinois, and the Circuit and Superior Courts. Said Parker, in his deposition heretofore taken, identified letters he had written threatening to commit the abovementioned murders, which letters he had signed 'Puritan Chuch—by Harrison Parker.' It was, therefore, alleged by and on behalf of this defendant in the divers petitions (filed to procure subpoenas), that said so-called 'Puritan Church' was either in con-

spiracy with said Parker to commit extortion by threatening to commit the above-mentioned murderers, or else was merely a sham devised by said Parker in an attempt to surround his attempted extortion and blackmail with an odor of sanctity.

"Said Parker, in resisting said petitions, and all other attempts to ascertain by deposition and in open court the identity and whereabouts of the persons he pretended composed said so-called 'Puritan Church' and said so-called 'Brotherhood of The Ancient Order of St. John,' stated under oath, both in the taking of his own and other depositions, and also in open court, on numerous occasions, that said so-called 'Puritan Church' and said so-called 'Brotherhood of The Ancient Order of St. John' had three 'trustees', one Conrad Miner, one Charles Norris, and one Homer Race, but that he did not know the whereabouts or residence of any of these three supposed 'trustees.'

"Defendant [Shamberg] was and is still seeking to procure the testimony of said three supposed 'trustees', Miner, Norris and Race, for the purpose of showing either that said so-called 'Puritan Church' and said so-called 'Brotherhood of The Ancient Order of St. John' were either in conspiracy with said Parker to commit the crime of extortion by threatening to commit the above described murders, or else were merely shams and fraudulent devices designed by said Parker, in an attempt to surround his attempted extortion and blackmailing with an odor of sanctity." The petition also avers that in one of the preliminary hearings in the slander suit after Parker had made a certain statement to the trial court Shamberg's attorney stated to the court: "This man [Parker] is very slippery," and they desire to have him make the statement under oath.

The prayer of the petition is: "(1) An order be entered directing said Parker to show cause why he should not be punished for contempt of court *first,* for obstructing justice by destroying the above mentioned records of said so-called 'Puritan Church' and said so-called 'Brotherhood of the Ancient Order of St. John' and said correspondence between said Parker and said Miner, Norris and Race while the same were being sought as evidence material to the merits of the matter in question in this cause; *second,* for obstructing justice by committing perjury by knowingly falsely swearing in open court on December 4, 1944, and on January 2, 1945, that all of said records were then in Canada; and *third,* for obstructing justice by committing perjury by knowingly falsely swearing in his said affidavit of January 4, 1945, that he had never heard of and never had any connection with the so-called 'Puritan Church Committee to Aid in Driving the Hoodlums, the Assassins and the Blackmailers out of the Control of Labor Unions, out of the Control of the Legal Profession, out of the Control of Journalism, and out of the Control of Politics—Conrad Miner, Charles Norris, Harrison Parker, Chairman.' (2) Petitioner likewise prays that said Harrison Parker be ordered to answer this petition under oath within a short day to be fixed by the Court." The trial court ruled that Parker should answer the petition.

When Shamberg's petition is considered in the light of the fact that Parker had demanded a jury trial in the slander case, it seems reasonably clear that the trial court should not have ruled Parker to answer the petition, as the evident purpose of that pleading was to have the trial court prejudge facts that Parker insisted should be submitted to a jury. Parker's answer to the petition takes

up a great many pages of the record. After the answer had been filed the trial court entered the following judgment order:

"ORDER

"THIS CAUSE COMING ON TO BE HEARD upon the sworn petition of defendant, Jacob Shamberg, filed by leave of court on January 15, 1945, while the cause of 'Harrison Parker, Plaintiff vs. Jacob Shamberg, Defendant, No. 43C-13381' was still pending before this court, *for an order requiring said Parker to show cause why he should not be punished for criminal contempt of court* by reason of the matters and things in said petition alleged, and upon Harrison Parker's answer thereto filed on January 22, 1945;

"THE COURT FINDS:

"(1) The Court has jurisdiction of the parties and of the subject matter hereof;

"(2) That on January 15, 1945, a sworn petition was filed on behalf of the Defendant, Jacob Shamberg, in the case of 'Harrison Parker, Plaintiff vs. Jacob Shamberg, Defendant, No. 43C-13381,' *which sworn petition charged said Harrison Parker with criminal contempt of court* by reason of the matters and things therein alleged;

"(3) That on January 15, 1945, an order was entered by this Court, requiring the said Harrison Parker to show cause by Friday, January 19, 1945 *why he should not be punished for criminal contempt of court by reason of the matters and things set forth in said petition* filed on behalf of said Jacob Shamberg;

"(4) . . .

"(5) That on Monday, January 22, 1945 said Parker filed in the office of the Clerk of the Circuit Court of Cook County his 'Answer to Petition for Rule to Show Cause,'

a true and photostatic copy of which Answer is attached hereto, incorporated herein, and made a part hereof, and marked 'Exhibit A' hereto;

"(6) That said 'Answer to Petition for Rule to Show Cause,' so filed by said Harrison Parker on January 22, 1945 which answer is attached hereto, incorporated herein, made a part hereof, and marked 'Exhibit A' hereto, *does not purge said Parker of the criminal contempt charged in said sworn petition filed on behalf of said Shamberg on January 15, 1945;*

"(7) That in said 'Answer to Petition for Rule to Show Cause,' so filed by said Parker on January 22, 1945 said Parker has affirmatively set forth scurrilous, scandalous, defamatory, immaterial matter, which constitutes an obstruction of justice and an abuse of the processes of this court, and which conduct of said Harrison Parker took place while this court was in open session and tended to lessen the dignity and authority of this court;

"(8) THE COURT FURTHER FINDS that said Harrison Parker, who is now here present in open court, is, by reason of said conduct, guilty of direct criminal contempt of this court;

"WHEREFORE, THE PREMISES CONSIDERED;

"IT IS ORDERED AND ADJUDGED that said 'Answer to Petition for Rule to Show Cause,' heretofore filed by said Parker in the office of the Clerk of this court on January 22, 1945 which is attached hereto, incorporated herein, made a part hereof, and marked 'Exhibit A' hereto, be, and the same is hereby attached hereto, incorporated herein, made a part hereof and marked 'Exhibit A' hereto with the same force and effect as if the same were set forth in full in the body of this order; and

[A] "IT IS FURTHER ORDERED AND ADJUDGED that said Rule to Show Cause heretofore issued by this court on January 15, 1945 requiring Harrison Parker to show cause why he should not be punished for contempt of court by reason of having committed the acts set forth in said petition heretofore filed on behalf of said Jacob Shamberg on January 14, 1945, in the case entitled Harrison Parker, Plaintiff, vs. Jacob Shamberg, Defendant, No. 43C-13381, be and the same is hereby made absolute; and

[B] "IT IS FURTHER ORDERED AND ADJUDGED that said Harrison Parker was and is hereby adjudicated guilty of and in direct criminal contempt of this court by reason of his having affirmatively set forth the scurrilous, scandalous, defamatory and immaterial matters set forth by him in said 'Answer to Petition for Rule to Show Cause,' heretofore filed by said Harrison Parker in the office of the Clerk of this Court on January 22, 1945; and

"IT IS FURTHER ORDERED AND ADJUDGED that said Harrison Parker stand committed to and be confined in the County Jail in said County of Cook and State of Illinois for ninety (90) days; . . ." (Italics ours.)

This order shows that the trial court thought that the petition of Shamberg charged Parker with "direct criminal contempt" of court, whereas it merely asked for a rule upon Parker to answer the petition; that the trial court thought that the order be entered required Parker to show cause why he should not be punished for criminal contempt of court, whereas the order merely required Parker to answer the petition filed by Shamberg. The court, in paragraph (6) of his judgment order, held that Parker by his answer did not purge himself "of the criminal contempt charged in said sworn petition filed on behalf of said Shamberg." Shamberg admits in his brief, as he must,

that his petition charges only indirect contempts, and that Parker could not be punished, under the petition, for destroying records out of the presence of the court, or for committing perjury in the presence of the court. Shamberg is compelled to rely, for an affirmance of the judgment order, upon that part of the order that we have designated as "[B]", wherein the court adjudges that Parker was guilty of direct criminal contempt of the court by reason of "scurrilous, scandalous, defamatory and immaterial matters set forth by him in said 'Answer to Petition for Rule to Show Cause.'" The court does not designate the part or parts of Parker's answer that are "scurrilous, scandalous, defamatory and immaterial," but Shamberg, in his brief, relies upon that part of Parker's answer wherein he charges that in the petition for rule to show cause one of Shamberg's counsel had "knowingly and recklessly perjured himself," and had taken "reckless liberties with the orderly processes of the law"; also upon the following paragraph of Parker's answer: "Two: That this Honorable Court, upon its own motion, examine into the conduct, herein set forth of said petitioner, Jacob Shamberg, and of his said counsel, Kirkland, Fleming, Green, Martin & Ellis, attorneys, and particularly said J. B. Martineau, Jr., for any improper conduct of which they are or any of them may be found guilty, particularly for their presuming to contrive to have one judge of this Honorable Court overrule the rulings of another judge of the Honorable Court, against the dignity of this court, and for committing perjury by swearing knowingly and falsely to certain petitions and motions filed herein by them or either of them; that in the event that they or any of them be found guilty, that they be punished accordingly, forthwith."

[9] When Shamberg filed the instant petition Parker had already filed the documents and pleading, thereby committing the contempt for which he was punished in the first amended judgment order, and in one of the documents Shamberg, *an assistant State's attorney*, was charged with selling out the State of Illinois and conniving with a thief, so that the latter was enabled to steal one million dollars from the State of Illinois. It is a reasonable assumption that when Shamberg filed his petition he was justly incensed at Parker because of that charge. In determining whether any statements in Parker's answer constitute direct contempt of court it must also be noted that Shamberg in his petition for a rule made many serious charges against Parker. The latter undoubtedly had the right to answer these charges and to make counter-charges. The petition is a highly provocative pleading, and Shamberg probably intended that it should have that effect. There is some force in the contention of Parker that the petition was designed to provoke him into making some answer or statement that would subject him to criminal prosecution or contempt proceedings. There is also force in Parker's argument that if the statements he made in his answer, upon which Shamberg now relies, constitute contempt of court, why did not the many charges made against Parker in the petition also constitute contempt of court? We do not think that the statement made by Parker in his answer wherein he asks the court to examine into the conduct of Shamberg and his counsel constitutes contempt of court, as Parker had as much right to ask the trial court to inquire into the conduct of Shamberg and his counsel as Shamberg had to ask the court to inquire into certain conduct of Parker. Shamberg contends, rather feebly, that certain parts of Parker's answer attack the trial court, and cites in support of the con-

tention, "(*Add. A. 158-192*)." We do not think that any statement contained in that part of Parker's answer justifies the instant contempt judgment. The petition bitterly attacks the so-called Puritan Church, and Parker in his answer defends the church from the attacks and insists that under the constitution the courts have no right to interfere with the conduct of churches. He states in the answer that Judge Harrington, when the matter was before him, refused to aid Shamberg in his attempts to inquire into the membership and conduct of that church, and that Shamberg in his petition is seeking to have Judge Trude overrule Judge Harrington, but that statement did not constitute direct contempt of court. We think that when the statements made by Parker in his answer are considered in the light of the serious charges that were made against Parker and the Puritan Church in the petition, the answer seems to be a fairly temperate pleading. We have reached the conclusion that the trial court erred in entering the second judgment order, finding Parker guilty of a direct criminal contempt.

The amended judgment order of the Circuit court of Cook county, entered January 23, 1945, finding Harrison Parker guilty of direct contempt, is affirmed. The second judgment order of the Circuit court of Cook county, entered January 23, 1945, finding Harrison Parker guilty of direct criminal contempt of court, is reversed.

Amended judgment order of the circuit court of Cook county entered January 23, 1945, finding Harrison Parker guilty of direct contempt, affirmed. Second judgment order of the Circuit court of Cook county entered January 23, 1945, finding Harrison Parker guilty of direct criminal contempt of court, reversed.

FRIENT, P. J., and SULLIVAN, J., concur.

APPENDIX C.

At a Term of the Appellate Court, Begun and held at Chicago, on Tuesday, the Second day of December, in the year of our Lord One Thousand Nine Hundred and Forty-Seven, within and for the First District of the State of Illinois.

Present Hon. Grover C. Niemeyer, Presiding Justice.

Present Hon. Michael Feinberg, Justice.

Present Hon. John M. O'Connor, Justice.

Sheldon W. Govier, Clerk. Elmer M. Walsh, Sheriff.

People of the State of Illinois, *Defendant in Error,*	
No. 43372 *vs.*	Appeal from Error to Cook County.
Harrison Parker, *Plaintiff in Error.*	

Be It Remembered, That on the 4th day of October, A. D. 1945, it being one of the days of the October Term, A. D. 1945, there was filed in the Office of the Clerk of said Appellate Court the Reply Brief for Plaintiff in Error, and on the cover and on pages Nos. 33 and 38 of said Reply Brief there is incorporated the following words and figures following, to-wit:

Here, again, the State's Attorney has mis-stated the patent facts. These we have dealt with adequately in our brief Point IX, pages 42 to 47. Of a certainty, the phrase, "amplification consisting of the physical inclusion of the atrocious affidavit and answer," is not true and does not square with the facts as a side-by-side comparison of those two orders will reveal.

The fact is that the order of January 23 was an entirely new and different order instead of, what the State's Attorney glibly refers to as, "an amplification."

The balance of that paragraph of the State's Attorney's brief can be answered with the statement that the law does not require useless acts. If the State's Attorney's position is true that the orders are identical, then certainly, having applied to the Supreme Court on the first order, it would be useless for Parker to apply to the Supreme Court for a review of the second order, which, the State insists, is so like the first.

The balance of that paragraph is not worthy either of the State's Attorney, nor of any heed.

"The second contempt order" (page 29).

Since this review deals with direct contempts, there is no reason whatsoever for the State's Attorney to mention "indirect" contempts, unless it be, either that he is confused, or that he is attempting to confuse, or that he is attempting to prejudice Parker.

Additionally, so long as we are not concerned with the charge (a) whether or not Parker did destroy any "records sought as evidence," which, of course, is not true and has not been proved true; and (b) "committing perjury," there is no purpose of the State's

"No Constitutional Questions are or can be involved in this review." (page 24)

> "First, Parker has waived all constitutional questions by suing out a writ of error to this Court * * * but the fact remains that by taking his case directly to this Court, Parker has waived all constitutional questions which this Court, under statute, has no jurisdiction to consider."

This is a questionable statement of the pertinent law. In no manner has Parker waived any questions that might arise under the Federal Constitution. It might be that the State's Attorney has reference to the Constitution of Illinois, but he has not said so, specifically. His position is taken, we will assume, with reference to the State Constitution. Even if his statement is true, which it is not, it must be pointed out that Parker first applied to the Supreme Court of Illinois for a review of the first, original and typical order. The Supreme Court claimed that it had no jurisdiction. If this be true, and the State says one is an amplification of the other, the Supreme Court should not take jurisdiction of the second contempt order, if it refused on the first. For the "amended" order is merely an "amplification." (See State's brief, page 20);

Additionally, under the Practice Act of the State of Illinois, Section 86, and Rule 47 of the Supreme Court of Illinois, if Parker has appealed to the wrong forum, that can be remedied by a motion to transfer it to the proper forum. And the Appellate Court has a duty, not to proceed to judgment, but to transfer the cause, and may do so, on its own motion. (*Schmidt* v. *Burr*, 328 Ill. 365). Therefore, it is not true, as the State's Attorney has stated, that no constitutional questions are or can be involved in this review. And, let us not overlook the Federal Constitution, which says:

I, Sheldon W. Govier, Clerk of the Appellate Court, in and for the First District of the State of Illinois, and keeper of the records, files and seal thereof, Do Hereby Certify, That the foregoing is a true copy of the cover and pages Nos. 33 and 38 of the Reply Brief for Plaintiff in Error filed in said Appellate Court in the above entitled cause, of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 30th day of January, in the year of our Lord one thousand nine hundred and Forty-Eight.

SHELDON W. GOVIER,
Clerk of the Appellate Court of the First District, Illinois.

(Seal)

At a Term of the Appellate Court, Begun and held at Chicago, on Tuesday, the Second day of December, in the year of our Lord One Thousand Nine Hundred and Forty-Seven, within and for the First District of the State of Illinois.

Present Hon. Grover C. Niemeyer, Presiding Justice.

Present Hon. Michael Feinberg, Justice.

Present Hon. John M. O'Connor, Justice.

Sheldon W. Govier, Clerk. Elmer M. Walsh, Sheriff.

People of the State of Illinois,
Defendant in Error,

No. 43372 *vs.*

Harrison Parker,
Plaintiff in Error.

Appeal from
Error to Cook County.

Be It Remembered, That on the 29th day of May, A. D. 1945, it being one of the days of the April Term, A. D. 1945, there was filed in the Office of the Clerk of said Appellate Court the Brief and Argument for Plaintiff in Error in said cause, and on the cover and on pages 3 and 11 of said Brief and Argument there is incorporated the following words and figures, to-wit:

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no concern with the Puritan Church. However, Shamberg instead of confining himself thereto, illegally and improperly sought to draw in the Puritan Church. In doing so, he recklessly, and with no basis in fact, and with none in law, and certainly without regard to materiality, charged Parker with a "scheme to insult, defame, scandalize and blackmail certain persons and firms." Parker, being required by the Court to answer these charges, was forced thereby, in his own defense to assert that which is true: that Shamberg and his Tribune lawyers have for years been engaged in just that against Parker and those with him.

The Court instead of examining into the truth of Parker's allegations, and inquiring into that which was brought before it by the recklessness of Shamberg and his Tribune lawyers, ignored it, deprived Parker of any right to defend himself from the continuation of the scheme of Shamberg and his Tribune lawyers, and found Parker guilty of contempt and sentenced him to ninety days in jail.

Thereafter, when a review of this order had been denied by the Supreme Court of Illinois, the Court illegally again took jurisdiction and entered an amended order, giving Parker another ninety days in jail.

After that, another motion was filed by Shamberg to again hold Parker in contempt of court. Yet, despite a full and sufficient answer thereto, Parker was given another ninety days in jail.

Theory of Defendant in Error.

We are unable to evolve any theory that would support the orders herein against Parker, and at the same time, not effect a miscarriage of justice.

Shamberg and his Tribune lawyers had been guilty for a long time prior thereto of that precise charge which they had so recklessly made against him.

Thereupon, the Court found that Parker was guilty of direct contempt of court and sentenced him to ninety days in jail. At the same time, on Shamberg's motion, the suit was dismissed "on its merits."

Parker then moved the Supreme Court of Illinois to grant him a writ of error and that it be made a supersedeas. It refused to take jurisdiction of his matter. That same day, the Court entered another and ampler order again sentencing Parker to ninety days in jail for direct contempt of court.

Again Shamberg moved for a rule on Parker to show cause why he should not be punished for contempt of court. In Parker's answer thereto, he set forth ample and sufficient grounds and facts to entitle him to be purged of any contempt and be discharged thereon. However, the Court instead found him guilty of direct criminal contempt and sentenced him to serve another ninety days in the County Jail.

I.

The proceedings of the trial Court are an attempt to defeat and to deny the God-given rights of all men.

It is axiomatic that nothing exists by itself. It is axiomatic that everything exists in relation to other things. It follows that to be understood, a matter cannot be understood by itself, and also that it can only be understood in relation to other things. If we consider this matter as concerned only with papers filed, words spoken ond orders entered, we miss the entire point and reason for this review, for none of these exist by themselves, but exist in relation to all that which pre-

I, Sheldon W. Govier, Clerk of the Appellate Court, in and for the First District of the State of Illinois, and keeper of the records, files and seal thereof, Do Hereby Certify, That the foregoing is a true copy of the cover and pages Nos. 3 and 11 of the Brief and Argument for Plaintiff in Error filed in said Appellate Court in the above entitled cause, of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 30th day of January, in the year of our Lord one thousand nine hundred and Forty-Eight.

SHELDON W. GOVIER,
Clerk of the Appellate Court of the First District, Illinois.

(Seal)